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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

CRIMINAL APPEAL No. 672/2004

APPELLANT Rahim Khan, S/o Ibrahim Khan, aged about 22 years, R/o Village Sarkho, P.S. Janjgir (CG)

VERSUS

RESPONDENT The State of Chhattisgarh

CRIMINAL APPEAL No. 781/2004

APPELLANT Ramchandra alias Ramcharan, aged about 18 years, son of Shri Mohanlal, resident of village Sarkho, police station Janjgir-Champa (CG)

VERSUS

RESPONDENT The State of Chhattisgarh, through the Station House Officer, Police Station Janjgir, Distt. Janjgir, Champa (CG)

13-12-2007

Shri M.D. Sharma, Counsel for appellant Ramchandra alias Ramcharan.

Shri Neeraj Mehta, Counsel for appellant Rahim Khan.

Shri G.K. Beriwal, Dy. Advocate General for the State.

2. Criminal Appeal No. 672/2004 at the instance of Rahim Khan and Criminal Appeal No. 781/2004 at the instance of appellant Ramchandra alias Ramcharan are being disposed of by this common judgment as both these appeals are directed against the judgment of

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conviction and order of sentence dated 6th August, 2004 passed in S.T. No. 24/2004 whereby learned Additional Sessions Judge, Janjgir has convicted them and co-accused Golan Sahu under Section 376 (2)(g) of I.P.C. and sentenced each of them to undergo R.I. for 10 years with fine of Rs. 1000/- and in default of payment of fine, to undergo R.I. for 3 months.

3. Case of the prosecution, in brief, is that the prosecutrix, a girl aged about 18 years had gone to village Sarkhon where her brother Ramayan resides. On 12-10-2003, the prosecutrix was in village Saragbundia in the house of her sister Kamini (P.W. 8) when co-accused Golan came there and informed that he is going to village ~~Saragbundia~~ Sarkhon and she may accompany him. On her refusal, again he came on 13-10-2003 and told that her sister-in-law is in labour pain and she has called her. On this, the prosecutrix accompanied her on his bicycle. They left the bicycle at Naila and went on foot to village Sarkhon however on way near Barchhapara school of village Sarkhon, he stopped on the pretext of going for mouth wash and thereafter caught her and forcibly raped her. After rape was committed by appellant Golan, present appellants also committed rape with her. After commission of rape, P.W. 4 Branda Prasad and some other persons reached there. There was quarrel between Branda Prasad and Golan and the appellants fled from there. She was rescued by P.W. 4 Branda Prasad who took her to home and she narrated about the incident to Branda Prasad and his wife. On the

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basis of the report of the prosecutrix offence was registered on 14-10-2004 at about 4.30 p.m. in police station vide Ex. P-1. During investigation, the prosecutrix was sent for medical examination to Government Hospital, Janjgir where Dr. (Smt.) Anita Shrivastava (P.W. 7) examined her and gave Medico Legal examination report of Ex. P-7. Underwear, Salwar, vaginal slides and pubic heirs of the prosecutrix seized during investigation were sent for chemical examination to Forensic Science Laboratory and the report of the FSL dated 28-2-2004 was received. The accused persons were also sent for medical examination to Government Hospital, Janjgir and their report is Ex. P-28, P-29 and Ex. P-30. School certificate of the prosecutrix was also taken into possession vide memo of Ex. P-3 which has been marked as Article A-1, according to which the date of birth of the prosecutrix is 5-9-85.

4. After completing investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Janjgir and the same was received on transfer by the learned Additional Sessions Judge for trial.

5. The prosecution examined 22 witnesses in all and thereafter statements of the accused were recorded. The appellants denied the circumstances appearing against them in prosecution case and pleaded innocence and false implication. Appellant Rahim Khan stated that since he had some quarrel with Ramayan, he has been

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falsely implicated whereas appellant Ramchandra did not take any specific defence.

6. Shri M.D. Sharma, learned counsel for appellant Ramchandra argued that though the prosecutrix has made allegation against appellant Ramchandra about participation in crime, however her testimony is not corroborated from the statement of other witnesses namely Ramayan (P.W. 2), Branda Prasad (P.W. 4), Bharatlal Rathore (P.W. 9) and Santoshi (P.W. 12). Referring to paragraphs 2 and 3 of statement of Branda Prasad (P.W. 4), it was argued that the allegation of rape is made by the prosecutrix against accused Golan only. Similarly referring to paragraphs 5, 6 and 7 of statement of P.W. 12 Santoshi, it was contended that the prosecutrix did not know the names of the persons who committed rape with her, however the appellant has been implicated in the said offence in the report which was lodged on the next day evening after deliberation. Her brother Ramayan (P.W. 2) has categorically stated that the prosecutrix did not know the name of Ramchandra whereas Bharatlal Rathore (P.W. 9) who is Sarpanch of village has deposed that when he enquired from the prosecutrix she only named Golan and Rahim as the persons who raped her and did not name appellant Ramchandra.

7. Shri Neeraj Mehta, learned counsel for appellant Rahim Khan argued that there is ample evidence available on record that the prosecutrix is resident of other village. She is not acquainted with

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the persons of village Sarkhon. She did not recognize the accused persons since before and there was absolutely no occasion for her to recognize the present appellants as the persons who committed rape with her. No test identification parade was conducted by the police to establish the identity of the appellants and in the absence of test identification parade, considering the discrepancy in the statement of other witnesses to whom the prosecutrix allegedly disclosed about commission of the crime, participation of the appellants in the crime in question has not been established beyond all reasonable doubt and the Court below ought to have extended benefit of doubt to the appellants.

8. On the other hand, learned counsel for the State submitted that the version of the prosecutrix is duly corroborated from her medical evidence wherein the doctor has found numerous injuries on her person as also on her private part. The report was lodged by the prosecutrix specifically naming the present appellants as perpetrators of the offence. She has categorically stated in paragraph 8 of her cross-examination that she had gone to village Sarkhon for the second time. She does not know the persons of village Sarkhon however the accused persons reside near the house of her brother. Appellant Rahim Khan resides 3-4 house away from the house of her brother whereas appellant Ramchandra resides in the middle of the village. She came to village Sarkhon about 1½ months before and she had stayed for 2 months and thus she was not only

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recognizing the accused persons by face but she also knew about their residences in the village and identity of the accused persons was very well known to her.

9. I have heard learned counsel for the parties. I have perused the record as also the impugned judgment.

10. Conviction of the appellants is based on the statements of the prosecutrix (P.W. 1), Ramayan (P.W. 2), his wife Santoshi (P.W. 12), Branda Prasad (P.W. 4) and sister of the prosecutrix Kamini (P.W. 18). Conviction is also based on the statements of Dr. (Smt.) Anita Shrivastava (P.W. 7) who has proved the injury report of the prosecutrix.

11. Sum and substance of the statement of the prosecutrix is that she identifies the appellants as also co-accused Golan. Co-accused Golan took her from village Saragbundia to Sarkhon on the pretext that her sister-in-law has called her, however while they reached near Barchhapara school, the said Golan who had already consumed wine at Champa stopped near the school at 7.30 p.m. and dragged her inside the school and committed rape with her, thereafter appellants Rahim Khan and Ramchandra came there and they also raped with her. After some time, Branda Prasad and another person of Dheemar caste came there. There was quarrel between Golan and Branda. She narrated about the incident to Branda and then Branda Prasad took her to his home. She narrated about the incident to his

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wife and in the night at about 1.30 a.m. her brother and a man took her from Branda's house where she narrated about the incident to them also. In the cross-examination, she has stated that she was in village Sarkhon for 1 ½ months. It was her second visit. Between the house of her brother and the house of Rahim, only 3-4 houses are there, however appellant Ramchandra resides in the middle of the village and the house and the house of Golan is at a distance of ½ km. In the lengthy cross-examination of this witness, the defence could not extract anything to demonstrate that there was any confusion in the mind of the prosecutrix regarding identity of the accused persons and the explanation given by her in para 8 of her deposition for recognizing the accused persons remained un-rebutted. Learned counsel for the appellants have heavily relied upon the statements of other witnesses P.W. 2 Ramayan, P.W. 4 Branda Prasad, P.W. 9 Bharatlal Rathore, P.W. 12 Santoshi, wife of Ramayan - Kantibai (P.W. 13) and Kamini Bai (P.W. 18) and contended that from the statement of these witnesses, it is manifestly clear that the prosecutrix did not recognize the accused persons since before and she did not name all the three accused persons when she narrated about the incident to them.

12. P.W. 2 Ramayan in paragraph 2 of the deposition has deposed that all the three accused persons committed rape with his sister in Barchhapara school while accused Golan was bringing her from village Saragbundia and this fact was narrated to him by his wife. In

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paragraph 9 also, he has only stated that his wife told him that the prosecutrix did not know the name of Ramchandra.

13. P.W. 4 Branda Prasad who reached the sport immediately after the incident has corroborated the statement of the prosecutrix in material particulars. In para 3 he has stated that the prosecutrix was raped by Golan and others. Similarly, Bharatlal (P.W. 9) in para 2 has stated that the prosecutrix on enquiry told him that Golan and Rahim raped her. Santoshi (P.W. 12) sister-in-law of the prosecutrix in para 2 has deposed that prosecutrix informed that she was raped by appellants and Golan in Barchhapara school. In para 7, she has categorically stated that she (Prosecutrix) told that though she did not know the names of other accused persons except Golan, however she claimed that she will recognize them and thereafter she recognized Ramchandra as the person who committed rape with her. P.W. 18 Kamini, sister of the prosecutrix has also stated that Golan committed rape with her however she did not name the other two persons who committed rape with her.

14. The version of the prosecutrix is also corroborated from the statement of Dr. (Smt.) Anita Shrivastava (P.W. 7) who examined the prosecutrix on 14-10-2003 at about 5.45 p.m. and who found following injuries on the person of the prosecutrix:-

i. Abrasion over left breast of size 2 x 2 cm;

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ii. Contusions two in number of size 2 x 1 cm and 3 x 3 cm on the left breast;

iii. Abrasion over para-urethral of size ½ x ½ cm; and

iv. Abrasion below libia minora of size ½ x ½ cm.

The injuries were caused within 24 hours of her examination and she has opined that there is attempt of forcible rape.

15. It is settled law that in the offence of rape, conviction can be based on the solitary testimony of the prosecutrix and corroboration of her version is not a requirement of law. However, for compelling reasons, Courts may look for corroboration. In the instant case, the prosecutrix has categorically described in detail the manner in which the offence was committed. She has lodged the report naming all the three accused persons as perpetrators of the offence. She has not only recognized the accused persons by name in her deposition but has also given location of their respective houses in the village as she had come to that village 1 ½ month prior to the incident and it was her second visit. The defence could not create any suspicion about the identity of the appellants by way of her cross-examination. Further more, her testimony is corroborated from the statement of Branda who reached the place of incident at the time of incident and rescued the prosecutrix from the clutches of the accused persons and

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he has also deposed that Golan and others committed rape with her. Her version finds corroboration from the version of other witnesses whose deposition has already been discussed in the foregoing paragraphs. Arguments of the counsel for the appellants based on the deposition of other witnesses who are witnesses of the fact that the prosecutrix told them about the incident after she returned home and they have stated that she did not recognize accused Ramchandra and Rahim since before cannot be a reason to disbelieve her. After appreciating the overall evidence available on record as also the statement of the prosecutrix and considering that her deposition is duly corroborated from the medical evidence, in the considered opinion of this Court, the prosecution has established the involvement of the appellants in the crime in question without an iota of doubt and the trial Court has not committed any illegality in holding the appellants guilty of the offence under Section 376 (2)(g) of I.P.C.

16. In the result, the appeals being devoid of substance deserve to be dismissed and they are accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

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